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HARRISBURG

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MARY E. D'ANDREA
Per _____

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY

:

Plaintiff

:

v.

:

No. 1:00-CV-00649

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE, *et al.*,

:

Judge Rambo

Defendants

:

Magistrate Judge Smyser ✓

MOTION TO DISMISS FILED ON BEHALF OF
DEFENDANTS PENNSYLVANIA BOARD OF PROBATION
AND PAROLE, JOSEPH SMITH, DANIEL ROBERTS,
GEORGE JOHNSON, CHARLES B. GIORNESTO, ARTHUR
THOMAS, K. SCOTT ROY, THOMAS RIDGE, WILLIAM
WARD, SHARON BURKS, SETH MENDELSON, FRED
JACOBS, NEIL MECHLING AND JAMES MORGAN

Defendants the Pennsylvania Board of Probation And Parole, Joseph Smith, Daniel Roberts, George Johnson, Charles B. Giornesto, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan, by their attorneys, move the Court to dismiss this action on grounds that:

1. The Board (which has no "individual capacity") is immune from damages by reason of the Eleventh Amendment to the U.S. Constitution.
2. The claims against Daniel Roberts, George Johnson, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Neil Mechling and James Morgan, although asserting conspiratorial conduct are really claims based on their supervisory responsibility. These defendants may not be held liable for the alleged conduct of others.
3. The claims against Arthur Thomas and Seth Mendelsohn, although couched as claims of conspiracy are in reality claims regarding their conduct as attorneys representing the Board in judicial proceedings. Their conduct did not violate any of plaintiff's constitutional rights. Moreover, they were functioning in the capacity of prosecutors and enjoy immunity for their actions.
4. The claim against Mr. Giornesto, although couched in terms of a conspiracy, is really a claim that Mr. Giornesto lied about information supplied to him by others. Plaintiff lacks standing to assert a due process claim for confiscation of the weapons he alleges were owned by his son and his interest to be at liberty on parole was extinguished with due process.
5. Joseph Smith is immune from damages for his testimony given under

oath at plaintiff's revocation hearing.

6. Fred Jacobs was conducting plaintiff's parole revocation hearing as a hearing examiner for the Board of Probation and Parole. Therefore he enjoys quasi-judicial immunity for any decision he rendered in that capacity.
7. The search of plaintiff's son's room did not violate plaintiff's Fourth Amendment rights.
8. Plaintiff has not obtained a favorable decision concerning his challenge to the parole revocation proceedings. Therefore plaintiff's claim under § 1983 is not cognizable.

Wherefore, the Court should dismiss the Pennsylvania Board of Probation And Parole, Joseph Smith, Daniel Roberts, George Johnson, Charles B. Giornesto, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan as defendants.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY:

Francis R. Filipi
FRANCIS R. FILIPI
Senior Deputy Attorney General
Attorney ID# 18630

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Defendants
Pennsylvania Board of
Probation And Parole, Joseph
Smith, Daniel Roberts, George
Johnson, Charles B. Giornesto,
Arthur Thomas, K. Scott Roy,
Thomas Ridge, William Ward,
Sharon Burks, Seth Mendelsohn,
Fred Jacobs, Neil Mechling and
James Morgan

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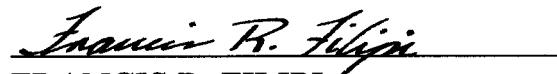
DATE: September 3, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY :
Plaintiff :
v. : No. 1:00-CV-00649
PENNSYLVANIA BOARD OF : Judge Rambo
PROBATION AND PAROLE, *et al.*, : Magistrate Judge Smyser
Defendants :

CERTIFICATE OF NONCONCURRENCE

I, FRANCIS R. FILIPI, hereby certify that concurrence in the Motion to Dismiss Filed on Behalf of Defendants Pennsylvania Board of Probation and Parole, Joseph Smith, Daniel Roberts, Charles B. Giornesto, George Johnson, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan was sought from plaintiff but that he would not concur.


FRANCIS R. FILIPI

DATED: September 3, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY	:	
Plaintiff	:	
	:	
v.	:	No. 1:00-CV-00649
	:	
PENNSYLVANIA BOARD OF	:	Judge Rambo
PROBATION AND PAROLE, <i>et al.</i> ,	:	Magistrate Judge Smyser
Defendants	:	

CERTIFICATE OF SERVICE

I, FRANCIS R. FILIPI, Senior Deputy Attorney General, hereby certify that on this date I caused to be served a copy of the foregoing Motion to Dismiss Filed on Behalf of Defendants the Pennsylvania Board of Probation And Parole, Joseph Smith, Daniel Roberts, George Johnson, Charles B. Giornesto, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan, by depositing a copy in the United States Mail, postage prepaid, first class, in Harrisburg, PA, addressed to the plaintiff as follows:

Gail Galloway
R.D. #1, Box 30
Petersburg, PA 16669

Plaintiff

Francis R. Filipi
FRANCIS R. FILIPI
Senior Deputy Attorney General

DATED: September 4, 2002